



**Njoroge (Suing as the Legal Administrator of the Estate of Darius Njoroge Kaime) v Koriata & another (Environment & Land Case E011 of 2021) [2022] KEELC 15660 (KLR) (2 March 2022) (Ruling)**

Neutral citation: [2022] KEELC 15660 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E011 OF 2021**

**MN KULLOW, J**

**MARCH 2, 2022**

**BETWEEN**

**JOHN MICHEL NJOROGE (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF DARIUS NJOROGE KAIME) ..... PLAINTIFF**

**AND**

**PETER KORIATA ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF NAROK ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff/respondent had on the 22/6/2021 filed in Notice of Motion seeking the following orders :-
  - i. Spent
  - ii. spent
  - iii. That the Honourable court be pleased to mark the application dated 15/6/2021 be marked as withdrawn.
  - iv. That the court do issue a temporary order of injunction prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> defendant/respondent from interfering and erecting tenants, interfering with any developing with a 10 metre portion arrived out of parcel No. 6 Block 8 within Narok township.
  - v. That a permanent injunction also do issue prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> defendant from erecting or interfering with development, cutting of trees or removing the original fence on a portion measuring 10 metres that was curved out the plot No. 6 Block 8 within Narok township.



2. On the 22/6/2020 the application was certified as urgent and the plaintiff directed to serve the application on the defendant for hearing on 29/6/2021.
3. On the 28/6/2021 the defendant/respondent in response to the application filed a Notice of preliminary objection on points of law which is the subject of the ruling herein. The defendant in the aforesaid preliminary objection raised the following point of law;-
  - i. That the plaintiff lacks the requisite locus standi to institute and continue this suit and the said Notice of Motion for and on behalf of the Estate of Darius Njoroge Kaima.
  - ii. That the application and the entire suit is Res judicata as a court of competent jurisdiction in Narok ELC No. 119 of 2019 adjudicated on the issue and rendered itself with finality via a Ruling delivered by Honourable George Njenga Wakahu.
  - iii. That the plaintiff applicant is estopped by the legal Doctrine of Estoppel from rearguing the application and the suit having been heard and a ruling on the matter issued.
  - iv. That the entire application and the suit would amount to an abuse of the court process and thus the entire suit is untenable and misconceived.
4. When the parties appeared before court on 29/6/2021 it was directing that the Notice of preliminary objection be disposed off first and parties were directed to file their written submission on the preliminary objection.
5. The defendant/ respondent in his submission contended on the first point contended that the applicant/plaintiff lacked the requisite locus standi. He stated that one cannot bring a suit for and on behalf of an Estate of a deceased person without first obtaining the requisite letter of Administration of the said Estate. He averred that the applicant though stating that the brought the suit for and behalf of the estate of the Late Darius Njore Kiame a deceased and thus without the said letters of Administration and the failure to annex a copy of the letter of administration making the present suit and application fatal.
6. To buttress the above position the defendant relied on the case of *Juliana Adoyo Onungo and Anothr v Francis Kiberege Bondeda (suing as the administrator of the estate of Fanuel Evans Amudavi*, where Mrima J described a party filing a suit without letters of administration as follows;-
 

“...Simply put a party without locus standi in a Civil suit lacks the right to institute and/or maintain the suit where a valid cause of action exists.... Locus standi relates mainly to the legal capacity of a party and the impact of part in a suit without legal capacity can be equated to that of a court acting without jurisdiction...”
7. The defendant further relied on the case of *Hawo Shanko v Mohamed Tuwa Shanko* (2018) eKLR where Chitembwe J stated;-
 

“The general census is that a party lacks Locus standi to file a suit before obtaining a grant Limited for that purpose.”
8. On the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> grounds of preliminary objection, the defendant contended that the existence of a previous suit being Narok CMC ELC No. 119 of 2019 is not disputed and that the 1<sup>st</sup> defendant in the instant suit was the defendant in the suit hereinabove referred to and that the applicant was enjoined n the said suit and the application heard, parties filed submission and court delivered a ruling in the matter in the application dismissed. The defendant further content that the applicant herein



appealed against the said ruling or applied for Review of same and here is his contention that the suit herein is res judicata as envisaged under section 7 of the Civil Procedure Act.

9. To buttress his position that the suit and the application in the defendant relied on the provision of section 7 of the Civil Procedure Act and the case of Independent Electoral Commission v Maina Kia and 5 others (Nairobi Court of Appeal No. 105 of 2017 (eKLR). Where the court held;-

“Thus for the basis of Res judicata to be effectively raised on account of a former suit the following element must be upheld;

- a. The suit or issue was between the same parties or parties under who they or any one of their claim
- b. That the suit or issue was directly or substantially in issue in the former suit.
- c. There parties were litigating under the same title.
- d. The issue was heard and finally determined.
- e. That the court had then heard and determined the matter was competent to try the suit.”

10. It is the defendant contention that the issue raised in the instant suit was raised in Narok CMC ELC No. 119 of 2019 and that they were between the same parties and the subject property was the same and accordingly the instant suit is res judicata and the same be dismissed as such.

11. The plaintiff/applicant in response to the 1<sup>st</sup> preliminary objection on locus standi stated that the plaintiff/applicant has the requisite stand as he has annexed to the application as copy of letter of Administration and has stated in her supporting affidavit to the Notice of motion that she is suing the legal administrator of the estate of the late and that the above fact was well known to the defendant.

12. On whether the suit herein is res judicata, the plaintiff/applicant contends that in Narok CMC ELC No. 119 of 2019 the plaintiff was one Kesimpuoti Ole Sadera while the 1<sup>st</sup> defendant in the instant suit was the sole defendant and that since the said application was for Joinder on the same having been dismissed however was nothing to bar the plaintiff from instituting and/or commencing the instant suit. He further stated pursuant to order 1 Rule 1 and 3 and Rule 9 the purpose of joinder of the parties basically to extended the process of hearing of the matter that is between the parties and that no suit shall be determined by way of Mis joinder.

13. The plaintiff further stated that the issue raised as well as the parties are not the same and the issue of the joinder of an interested party was not to contest the hearing of the matter. The plaintiff contended that the defendant herein has not produced any proceedings to show that the plaintiff participated in the said suit before the magistrate’s court and further that the doctrine of estoppel does not stop the plaintiff from instituting the present suit and that the suit be heard on priority.

14. I have considered the preliminary objection raised by the defendant his submission on the same and the submission filed by the plaintiff and the issue for determination before me are two;-

- i. Whether the plaintiff has the locus standi to institute the present suit.
- ii. Whether the suit herein is Res judicata.

15. On whether plaintiff has the requisite locus standi. The court have severally stated that a party must have and /or possess the power to institute proceeding whether they are related to deceased person or in another such capacity whether the actual party may not be able to institute proceeding on his own



behalf. In the instant matter the defendant states that the plaintiff has not obtained the requisite letter of Administrator to enable him commence the suit herein, the plaintiff on his part states that whereas it is from that he brought the suit herein on behalf of the estate of the late Darius Njoroge Kaime he has obtained and attaches to same letter administration.

16. I have perused the pleadings filed by the plaintiff/applicant and I confirm that the plaintiff vide his supporting affidavit in the notice of motion dated 15/6/2021 and filed in court on 16/6/2021 annexed hereto a copy of a grant of letters of administration issued on 22/4/2002 to Francis Kiame Njoroge and John Micheal Njoroge of Postal Office Box 273 Nakuru in the estate of Dairus Njoroge Kiame the defendant had only contended that the plaintiff did not have the requisite grant and here the suit was incompetent. In the absence of any challenge to the said letters of administration which I earlier on stated was annexed to the plaintiff supporting affidavit on the Notice of Motion dated 15/6/2021. I filed that the applicant properly before this court and has met the threshold to institute the proceedings herein and I will dismiss the first ground of preliminary objection.
17. On whether the suit herein is res judicata both parties do not dispute the fact that there was previous proceedings being Narok CM ELC case No. 119 of 2019 between the plaintiff herein who was on interested party in the above suit and the 1<sup>st</sup> defendant who was the defendant in the said matter. The plaintiff herein was enjoined in the suit as an interested party on his own motion and the trial court upon hearing the partes rendered a ruling wherein the court held that the interested party has failed to justify his presence in the matter. The court having heard the parties and the matter, the applicant contents that the matter was conclusively heard and determined.
18. Section 7 of the [Civil Procedure Act](#) provides the following with regard to whether a matter is res judicator or not;-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directing and substantially an issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title, in a court competent to try such subsequent suit...”
19. The [IEBC v Maina Kiai and 5 others](#), Nairobi Civil Appeal No. 165 of 2017 eKLR the Court of Appeal has set the following condition to be met for a matter to be Res judicator in that the suit or issue was directly and substantially an issue in a former suit, that the former suit was between the parties and those parties were litigating under the same title and the issue heard consequently, I find that the plaintiff is instituting the suit herein was contravention of the provisions of section 7 of the [Civil Procedure Act](#) and I thus, find that the matter herein is res judicator and I therefore dismiss the Notice of motion dated 15/6/2021 with costs.

**DELIVERED SIGNED AND READ VIRTUALLY AT MIGORI THIS 2<sup>ND</sup> DAY OF MARCH 2022.**

**MOHAMED N. KULLOW**

**JUDGE**

**Ruling delivered in presence of:-**

**Non appearance for Plaintiff /Respondent**

**Mr. Murunga holding brief for Chilote for Defendant/Respondent**

Tom Maurice - Court Assistant

